UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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DEBORAH STAMPFLI,

Plaintiff,

v.

SUSANVILLE SANITARY DISTRICT, a political subdivision of the State of California; STEVE J. STUMP, in his individual and official capacities; ERNIE PETERS, in his individual and official capacities; DAVID FRENCH, in his individual and official capacities; KIM ERB, in his individual and official capacities; MARTY HEATH, in his individual and official capacities; DOES I-V, inclusive, BLACK & WHITE CORPORATIONS I-V; and ABLE & BAKER COMPANIES, inclusive,

Defendants.

No. 2:20-cv-01566-WBS-DMC

ORDER RE: DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

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This case is back before the court on the motion of defendants District, Stump, Murray, Peters, French, Erb, and

Heath to dismiss plaintiff's Third Amended Complaint. (See Mot. to Dismiss ("Mot.") (Docket No. 56).)

I. Federal Claims

A. Procedural Due Process

1. Claim Against Stump

As stated in the court's previous order, because plaintiff has adequately alleged a protected property interest, she has stated a procedural due process claim against defendant Stump. (See Docket No. 48 at 8-11.)

2. Claims Against Individual Board Members

Plaintiff continues to allege that the individual board member defendants each "participated in the decision to terminate [her] employment and/or the denial of [her] pre- and post-termination rights," or, if they did not, "otherwise authorized, approved, knowingly acquiesced in, and/or ratified the actions of other defendants who deprived plaintiff of her constitutional rights." (See Third Amended Complaint ("TAC") at ¶¶ 42, 58, 74, 90, 106 (Docket No. 51).) She further alleges that, during a closed session board meeting, they "intentionally, deliberately, knowingly, willfully, wantonly and in bad faith, ignored and disregarded [her] rights and directed, approved, authorized, acquiesced, condoned or otherwise facilitated" and "personally participated" in decisions to terminate her and deny her procedural protections. (See id. at ¶¶ 232-34, 330-31.)

Plaintiff has also added new allegations averring that each defendant board member was present at one or more meetings where plaintiff's termination was discussed, were aware of Stump's intention to terminate plaintiff and of documents

establishing her for-cause protections, and yet failed to take action to prevent plaintiff's termination or to provide her with pre- or post-termination procedures. (See id. at ¶¶ 31-41, 47-57, 63-73, 79-89, 95-105.)

Even with these updates, plaintiff's allegations still contain merely conclusory factual allegations that are insufficient to survive defendants' motion to dismiss, because they fail to adequately allege that the defendant board members' conduct proximately caused the alleged violations of plaintiff's procedural due process rights. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991); (Docket No. 48 at 11-13). The only allegations speaking to the board defendants' role in the alleged violations are the vague allegations that they "participated in" relevant decisions, without saying how, and conclusory statements -- unsupported by factual allegations stating any action the board members took -- that they either "authorized," "approved," "acquiesced in," or "ratified" actions of other unspecified defendants. Plaintiff does not, for example, allege that the board members voted to approve her termination, or even that any board member voiced approval of the decision to terminate her beforehand or afterwards.

Plaintiff cites Gomez v. Vernon, 255 F.3d 1118, 1127 (9th Cir. 2001), for the proposition that "[e]ven if the individual Board Members had not actually voted to terminate the plaintiff's employment, their failure to 'take any remedial steps after the violations can indicate a deliberate choice and establish an independent basis for liability.'" (Opp. to Mot. at 36 (Docket No. 61).) Although she quotes Gomez's statement that

a "turn[-]a-blind-eye approach does not insulate [a defendant]" from liability for failing to take remedial action, (id.), she omits critical statements that immediately follow: that in Gomez, the district court had made detailed factual findings showing that "the retaliatory acts were condoned by the [defendant] officials, sufficient to make clear to officers they could get away with anything," 255 F.3d at 1127 (quotation marks omitted, alterations adopted). There are no allegations to support a comparable theory in this case.[1]

Because plaintiff has not demonstrated that the individual board members had a duty to intervene to protect plaintiff from a violation of her procedural due process rights, and the Third Amended Complaint has not adequately alleged personal involvement by the defendant board members, it fails to state individual § 1983 claims against them. Accordingly, the court will dismiss plaintiff's due process claims against the defendant board members.

3. Claims Against the District

Because § 1983 does not provide for vicarious liability, a local government "may not be sued under § 1983 for

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[1] Plaintiff also cites a number of Ninth Circuit decisions "recogniz[ing] that members of a council or board may be held individually liable for their conduct even when they act by way of a majority vote." (See Opp. to Mot. at 35 (Docket No. 61) (citing Navarro v. Block, 250 F.3d 729, 734 (9th Cir. 2001); Trevino v. Gates, 23 F.3d 1480, 1482-83 (9th Cir. 1994); Heller v. Bushey, 759 F.2d 1371, 1375 (9th Cir. 1985), rev'd on other grounds, 475 U.S. 796 (1986); Cinevision Corp. v. City of Burbank, 745 F.2d 560, 579-80 (9th Cir. 1984)).) However, because plaintiff has not alleged that a majority of the board member defendants -- or any -- voted to terminate her or deny her pre- or post-termination review, these decisions are inapposite.

an injury inflicted solely by its employees or agents." Monell v. Dept. of Soc. Servs. of the City of N.Y., 436 U.S. 658, 694 (1978). "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may be fairly said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Id. That particular challenged acts "may be fairly said to represent official policy," thereby demonstrating the existence of a § 1983 claim for municipal liability, may be shown in several ways relevant to plaintiff's allegations.

a. Direct Municipal Action

"[M]unicipalities may be held liable . . . for acts for which the municipality itself is actually responsible, 'that is, acts which the municipality has officially sanctioned or ordered.'" City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988) (plurality opinion) (quoting Pembaur v. Cincinatti, 475 U.S. 459, 480 (1986)). Actions of individual municipal officials may be said to represent official policy, but only as to "officials who have final policymaking authority," and whether a particular official has such authority "is a question of state law." Id. (emphasis omitted) (quoting Pembaur, 475 U.S. at 483 (plurality opinion)[2]).

Because the Third Amended Complaint fails to adequately allege personal participation by the defendant board members, as explained above, it likewise fails to adequately allege that

[2] A majority of justices joined the Supreme Court's opinion in Pembaur, except as to section II.B of that opinion. See 475 U.S. at 471. Where that section is cited in this order, the court has noted this distinction.

their involvement amounted to a "formal decision[ ]" that would render any alleged constitutional violations attributable to the District itself. Cf. Gomez, 255 F.3d at 1127 ("[A] policy-maker's pronouncement that he has not or will not discipline officers that retaliated against prison litigators is sufficient evidence of a policy or custom . . . ."). Accordingly, it fails to state a claim for municipal liability under this theory.

b. Ratification

"[W]hen a subordinate's decision is subject to review by the municipality's authorized policymakers," who "approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality because their decision is final." Praprotnik, 485 U.S. at 127; see also Clouthier v. Cnty. of Contra Costa, 591 F.3d 1232, 1250 (9th Cir. 2010) (recognizing same), overruled on other grounds by Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1070 (9th Cir. 2016). The complaint must adequately allege "a conscious, affirmative choice on the part of the authorized policymaker." Clouthier, 591 F.3d at 1250 (citation and internal quotation marks omitted).

Because the Third Amended Complaint does not contain sufficient, nonconclusory factual allegations to allege that any of the defendant board members made any "conscious, affirmative choice" to approve Stump's termination of plaintiff or to ratify any decision to deny her procedural protections, it fails to state a claim for municipal liability under this theory as well.

c. Delegation

Finally, plaintiff alleges that the board delegated the relevant final policymaking authority to General Manager Stump,

such that his alleged violations of her procedural due process rights are attributable to the District and thus may support a Monell claim. (See TAC at ¶¶ 11-28, 111-12, 332; Exs. 1, 2 (Docket Nos. 51, 51-1, 51-2).) In support of this theory, plaintiff relies on a District ordinance and resolution attached to the Third Amended Complaint, which she argues demonstrate that Stump, as General Manager, had been delegated the relevant final policymaking authority. (See TAC, Exs. 1, 2 (Docket Nos. 51-1, 51-2); Opp. to Mot. at 37-39 (Docket No. 61)); see also Pembaur, 475 U.S. at 483 (plurality opinion) ("[W]hether an official had final policymaking authority is a question of state law.").

The ordinance and resolution, in fact, more clearly demonstrate that such a delegation had not occurred, and that the board retained final policymaking authority on relevant matters. (See Mot. at 11-13 (Docket No. 56).) District Ordinance No. 17 is titled "An Ordinance . . . Establishing A Personnel System," Section 2 of which designates the "District Manager"[3] as the District's "Personnel Officer." (TAC, Ex. 1 (Docket No. 51-1).) It goes on to describe the Personnel Officer's duties, including "[a]dminister[ing] . . . provisions of this ordinance and of the personnel rules"; "[p]repar[ing] and recommend[ing] to the

[3] The complaint also refers to the "District General Manager," suggesting that "District Manager" and "General Manager" are the same position. (See TAC at ¶ 18 (Docket No. 51).) Resolution No. 04.06, plaintiff's second exhibit, refers to the "District General Manager" as well, which further supports this notion, (see TAC, Ex. 2 (Docket No. 51-2)), though defendants suggest that they are different positions, (see Mot. at 11 n.6 (Docket No. 56)). However, construing the complaint in the light most favorable to plaintiff, the court will assume they are the same for purposes of the instant motion.

District Board personnel rules and revisions"; "[p]repar[ing] . . . a position classification plan," which "shall become effective upon approval by the District Board"; and "[p]repar[ing] . . . a plan of compensation," which likewise "shall become effective upon approval by the District Board." (Id. (emphasis added).) Section 4 of the Ordinance provides that "Personnel Rules shall be adopted by resolution of the District Board," and Section 5 provides that "[a]ll [personnel] appointments shall be made by the District Manager, and ratified by the District Board." (Id. (emphasis added).)

All of these provisions clearly operate to constrain the District Manager's authority respecting personnel rules and, in many cases, specifically provide that the District Manager's choices and recommendations respecting rules and other matters relating to personnel are subject to the board's approval.[4] As plaintiff acknowledges, case law makes clear that where an official's decision respecting a particular issue is reviewable by another official or official body with greater authority, the subordinate official cannot be deemed a final policymaker with respect to that issue. (See Opp. to Mot. at 39 (Docket No. 61) (citing King v. Garfield Cnty. Pub. Hosp. Dist. No. 1, 2:12-cv-0622-TOR, 2016 WL 3566218, at *7 (E.D. Wash. June 27, 2016), aff'd sub nom. King v. McGee, 739 F. App'x 864 (9th Cir. 2018))); see also Praprotnik, 485 U.S. at 127-29 ("[W]hen a subordinate's decision is subject to review by the municipality's authorized

[4] The body of the complaint cites these documents, and accordingly uses the same or similar language to describe the General Manager's responsibilities concerning personnel management. (See TAC at ¶¶ 12-16 (Docket No. 51).)

policymakers, they have retained the authority to measure the official's conduct for conformance with their policies.").

Likewise, Resolution No. 04.06 states that "the Board of Directors is the body within the District empowered and charged with the adoption of policies," (TAC, Ex. 2 (Docket No. 51-2)), indicating that the board, not the General Manager, is the final policymaker with respect to "promulgat[ion of] policies and procedures," (Opp. to Mot. at 39 (Docket No. 61)). Although the resolution also directs the General Manager to "adopt an employee discipline policy and procedure . . . in coordination with District Counsel," it goes on to clarify that these "shall conform to the policies and tenets" outlined in detail in an attached exhibit. (TAC, Ex. 2 (Docket No. 51-2).) This makes clear that the District, not the General Manager, dictated the terms of employee discipline policies and procedures and thus retained final policymaking authority as to that issue.

Plaintiff points to Section 8 of Ordinance No. 17, which provides that "[t]he District Manager shall have the right, for due cause, to demote, dismiss, reduce in pay, or suspend without pay for thirty calendar days, any permanent employee." (TAC, Ex. 1 (Docket No. 51-1).) The relevant inquiry, however, is whether Stump had been delegated final policymaking authority over relevant matters and, if so, whether a final policy he created caused a deprivation of plaintiff's rights. See Monell, 436 U.S. at 694 (municipal liability exists only "when execution of a government's policy or custom . . . inflicts the injury"); Pembaur, 475 U.S. at 483 (plurality opinion) ("Authority to make municipal policy . . . may be delegated by an official who

possesses such authority."). Plaintiff's suggestion that discretionary authority to make individual personnel decisions is sufficient is therefore unavailing; rather, authority to create final policy governing those decisions is what is required.

Further, throughout the Third Amended Complaint, plaintiff repeatedly acknowledges that dismissals of permanent employees are subject to pre- and post-termination review -- the crux of her procedural due process claim -- per the board's own duly adopted policies and procedures. (See, e.g., TAC at 37, 41, 331 (Docket No. 51) (citing Resolution No. 04.06 (Docket No. 51-2)).) These allegations confirm that any of the General Manager's disciplinary decisions, including dismissal, were subject to review before becoming final; as Praprotnik makes clear, this means the General Manager was not a final policymaker as to hiring and firing decisions. See 485 U.S. at 127-29.[5]

For the foregoing reasons, the court concludes that the Third Amended Complaint, incorporating exhibits 1 and 2, still fails to sufficiently allege that Stump was a final policymaker with respect to the due process violations plaintiff alleges. The court will therefore grant defendants' motion to dismiss

[5] Section 9 of Ordinance No. 17, which reserves for "the District Board [the ability to] abolish any position or employment" in the District," (see TAC, Ex. 1 (Docket No. 51-1)), provides further support for the conclusion that the board, not the General Manager, is the final policymaker respecting the management of District positions and staffing.

Further, as noted, plaintiff argues that Stump had final authority "to hire and fire employees." (Opp. to Mot. at 39 (Docket No. 61).) However, Ordinance No. 17, which states that "[a]ll appointments shall be made by the District Manager[ ] and ratified by the District Board," (TAC, Ex. 1 (emphasis added) (Docket No. 51-1)), makes clear that the District Manager lacked final authority as to hiring as well.

plaintiff's procedural due process claim under § 1983 as against the District.

B. Conspiracy to Deprive Procedural Due Process

Because, as previously noted, the Ninth Circuit has made clear that "conspiracy is not itself a constitutional tort under § 1983," (Docket No. 48 at 17 (quoting Lacey v. Maricopa County, 693 F.3d 896, 935 (9th Cir. 2012) (en banc))), and because plaintiff has added no allegations to her complaint bearing on this point, the court will grant defendants' motion to dismiss the Third Amended Complaint's conspiracy claim.

V. State Law Claims

A. Violation of District Law, Policy, and Procedure

Plaintiff has styled her fourth cause of action as "Violation of District Law, Policy, and Procedure." (See TAC at ¶¶ 288-322 (Docket No. 51.) Although plaintiff cites no statute providing for such a cause of action, she cites two California Court of Appeal decisions, Read v. City of Lynwood, 173 Cal. App. 3d 437, 442-43 (2d Dist. 1985), and Summers v. City of Cathedral City, 225 Cal. App. 3d 1047, 1065-66 (4th Dist. 1990), in contending that "an employee who is terminated in violation of the employer's own laws or regulations has a valid claim for relief against the employer." (TAC at ¶ 290 (Docket No. 51).)

After Read was decided by the California Court of Appeal, however, that court has repeatedly disapproved of the decision. See Kemmerer v. Cnty. of Fresno, 200 Cal. App. 3d 1426, 1434 (5th Dist. 1988), disapproved of on other grounds by Quigley v. Garden Valley Fire Protection Dist., 7 Cal. 5th 798, 814 (2019); Hill v. City of Long Beach, 33 Cal. App. 4th 1684,

1692 n.11 (2d Dist. 1995); see also Trevino v. Lassen Mun. Utility Dist., 2:07-cv-02106-LKK-DAD, 2008 WL 269087, at *7 (E.D. Cal. Jan. 29, 2008) (recognizing disapproval).

Further, the relevant portion of Summers -- which relied on Read -- is most clearly read to stand for the proposition that California's rule against contracts restricting terminations of public employment does not preclude assertion of other causes of action that may exist based on a municipality's violation of its own laws. See Summers, 255 Cal. App. 3d at 1065. But this proposition, in and of itself, does not establish a separate cause of action by which public employees may sue for alleged rules violations.

In Retired Employees Association of Orange County, Inc. v. County of Orange, 52 Cal. 4th 1171, 1176 (2011), the only other case which could remotely support plaintiff's theory, the California Supreme Court held merely that, absent a legislative prohibition, "a California county and its employees [may] form an implied contract that confers vested rights to health benefits on retired county employees." Nowhere does it articulate a generalized cause of action against municipalities for violations of their own laws or regulations, or even a more limited one in the employment termination context.

Because plaintiff has failed to identify a valid cause of action or common law doctrine that would permit plaintiff to proceed on this theory apart from her procedural due process claim, the court will dismiss this cause of action for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

B. Government Claims Act

Defendants again argue that plaintiff's failure to present a public entity claim under the Government Claims Act (the "Act") to the District prior to filing suit constitutes a fatal, incurable defect to each of plaintiff's state law causes of action seeking damages. (See Mot. at 18-28 (Docket No. 56).)

1. Injunctive and Declaratory Relief

As before, plaintiff argues she need not comply with the presentation requirements for claims seeking money damages because hers is primarily one for declaratory and/or injunctive relief. (See TAC at ¶ 2 (Docket No. 51).) However, the court has previously concluded plaintiff is not entitled to this exemption because her prayer for damages is not "clearly incidental to her claim for injunctive and declaratory relief," given the extensive compensatory and punitive damages she seeks, (see Docket No. 48 at 22-23), and plaintiff does not appear to have altered her requested relief in her Third Amended Complaint.

2. Fees, Salaries, and Wages

As before, plaintiff argues that her claims, to the extent they seek compensation for unused earned sick and personal leave, are exempted from these requirements pursuant to one of the Act's statutory exceptions, which exempts "[c]laims by public employees for fees, salaries, wages, mileage, or other expenses and allowances" from presentation. (Opp. to Mot. at 57-58 (boldface omitted) (Docket No. 61)); Cal. Gov. Code § 905(c). This argument is identical to that presented in plaintiff's previous opposition, (see Docket No. 44 at 75-76), which the court addressed in its previous order, stating that because plaintiff had not sufficiently alleged excuse from compliance

with the presentation requirement in her complaint, the court could not credit her argument on that point, (see Docket No. 48 at 29 n.10). Although the court specified that it would give plaintiff leave to amend her complaint to add allegations in support of this argument, (see id.), she does not appear to have done so in the Third Amended Complaint, (see TAC (Docket No. 51)).

3. Actual Compliance with Government Claims Act

Plaintiff contends she has complied with the Act's presentation requirements "by way of various written communications to the District through its General Managers, as well as written and oral communications to the defendants' retained legal counsel, Kevin A. Flautt." (See TAC at ¶ 116 (Docket No. 51).) In response to the court's previous order, plaintiff has attached four of the written communications as exhibits. (See TAC, Exs. 3-6 (Docket Nos. 51-3, 51-4, 51-5, 51-6).) Although the oral communications referenced in the Third Amended Complaint have not been provided, it goes without saying that oral communications are not a written claim, as required by the Act. See Wilhite v. City of Bakersfield, No. 1:11-CV-1692 AWI JLT, 2012 WL 273088, at *7 (E.D. Cal. Jan. 30, 2012).

As for the written communications, as stated in the court's prior order, a series of letters, taken collectively, cannot constitute a "claim" within the meaning of the Government Claims Act. (See Docket No. 48 at 24-25.)[6] Accordingly, the

[6] As previously stated, any "supplemental claims" plaintiff presented to the District after filing this suit and after defendants filed their first motion to dismiss cannot establish compliance with the Act. (See Docket No. 48 at 25-26.)

court looks to the one most relevant letter to evaluate its compliance with the act. Plaintiff alleges that, in a letter, the District "denied all the plaintiff's claims." (TAC at ¶ 123, Ex. 6 (Docket Nos. 51, 51-6).) That letter responded directly to a letter from plaintiff's counsel dated March 30, 2020, attached to the complaint at Exhibit 3, which thus appears to represent the most relevant letter for the court to evaluate.

The March 30 letter plainly fails to adhere to the Act's enumerated requirement for a claim. Although it includes plaintiff's counsel's mailing address, it does not include "[t]he . . . post office address of the claimant," any "[monetary] amount claimed," or "whether the claim would be a limited civil case." Cal Gov. Code §§ 910(a),(f) (emphasis added); (see TAC, Ex. 3 (Docket No. 51-3)); see also Olson v. Manhattan Beach Unified Sch. Dist., 17 Cal. App. 5th 1052, 1061 (2d Dist. 2017) (holding claim failed to substantially comply with Act's presentation requirements where it "d[id] not contain the address of the claimant" or "the dollar amount claimed or whether the claim would be a limited civil case").

Indeed, the contents of the letter do nothing to make clear that it is intended to function as a claim at all. Rather, it states that "Ms. Stampfli wishes to reserve and utilize any

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Further, "it is well-settled that claims statutes must be satisfied even in the face of the public entity's actual knowledge of the circumstances surrounding the claims. Such knowledge, standing alone, constitutes neither substantial compliance nor a basis for estoppel." See J.J. v. City of San Diego, 223 Cal. App. 4th 1214, 1219 (4th Dist. 2014) (internal citations omitted). Plaintiff's arguments to the contrary are therefore unavailing.

and all rights and duties which may stem from binding union contracts or collective bargaining agreements," and "request[s] that she be afforded any and all appeal or review rights available." (TAC, Ex. 3 (Docket No. 51-3).) It further "demands . . . proper procedural and substantive due process," including "notice of the reason for the deprivation of [plaintiff's] rights (disciplinary actions, including suspension and termination), as well as an opportunity to provide a response that would be afforded meaningful consideration." (Id.) It goes on to state that, "[f]inally, Ms. Stampfli wishes to initiate any informal and/or formal grievance procedures at this time." (Id.)

Nowhere does the letter indicate plaintiff sought monetary compensation, yet section 910 and precedent construing it make clear that a "claim" under the Act is necessarily a monetary claim. See Cal. Gov. Code § 910(f) (requiring that a claim include "[t]he amount claimed"); Loehr v. Ventura Cnty. Comm. Coll. Dist., 147 Cal. App. 3d 1071, 1082-84 (2d Dist. 1983) (noting that, although the substantial compliance doctrine may apply when a claim is defective, it "cannot cure total omission of an essential element from the claim," and that plaintiff's claim was fatally defective in part because "[n]owhere in the letter is there a claim for money damages, nor, for that matter . . . even an estimate of the amount of any prospective injury, damage or loss") (citing Cal. Gov. Code §§ 910, 945.4)).

Because the operative letter did not comply with the Government Claims Act's requirements, plaintiff has not alleged facts demonstrating compliance with the Act.

4. Notice Provisions of Government Claims Act

Plaintiff argues that defendants' right to assert a defense based on the Act is waived because "defendants never provided notice to the plaintiff or her retained representative that her claims were defective or deficient in any way." (TAC at ¶ 141 (Docket No. 51)); see Cal. Gov. Code § 911. As noted, however, the March 30, 2020 letter does nothing to identify itself as a claim or otherwise indicate that plaintiff sought financial compensation, as a claim must. Rather, it identified itself as a request for "appeal or review" and to "initiate . . . grievance procedures." (See TAC, Ex. 3 (Docket No. 51-3).) There was thus no reason the District would have recognized a need to notify plaintiff of the letter's insufficiency as a claim within the meaning of the Act, as the letter did not purport to be one nor was it recognizable as such. Accordingly, the District has not waived its sufficiency defense.

5. Contract-Based Exemptions

Finally, plaintiff argues that she is exempted from the Act's presentation requirements as to her contract-based claims pursuant to Government Code sections 930 and 930.4. (See Opp. to Mot. at 57-59 (Docket No. 61).) However, "as a matter of [California] law, there can be no express or implied-in-fact contract between plaintiff and [her public employer] which restricts the manner or reasons for termination of his employment." See Summers, 225 Cal. App. 3d at 1066 (citing, inter alia, Miller v. California, 18 Cal. 3d 808, 813 (1997) ("[I]t is well settled in California that public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a

vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law."), and Humbert v. Castro Valley Cnty. Fire Prot. Dist., 214 Cal. App. 2d 1, 13 (1st Dist. 1963) (applying rule in context of special municipal districts)).

Accordingly, this exemption does not apply, and plaintiff's state law claims in counts one, two, and three of the Third Amended Complaint must be dismissed.

C. California Public Records Act

The court previously directed plaintiff "to explicitly detail the categories of public records and particular public documents sought that have not been produced by defendants," (see Docket No. 48 at 32 n.11), and she has since updated her complaint to include a ten-item list describing the categories of records sought, (see TAC at ¶ 364 (Docket No. 51)). Defendants dispute these allegations. (See Docket No. 58.) Yet, because on a motion to dismiss the court must take plausible and well-pleaded facts alleged in the complaint as true, see Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001), the court will credit plaintiff's allegations at this stage and thus will deny defendants' motion as to plaintiff's Public Records Act claim.[7]

IT IS THEREFORE ORDERED that defendants' motion to dismiss plaintiff's Third Amended Complaint, insofar as it seeks dismissal of plaintiff's procedural due process claim against

[7] The court notes, however, that it does not look favorably upon unfounded factual allegations. Accordingly, to the extent that defendants dispute these allegations' accuracy, the court hopes that plaintiff is correct. See Fed. R. Civ. P. 11(b)(3).

defendant Stump in his individual capacity (count five), and of her California Public Records Act claim (count seven), be, and hereby is, DENIED;

AND IT IS FURTHER ORDERED that in all other respects, defendants' motion be, and hereby is, GRANTED.[8]

Dated: December 10, 2021

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

[8] In her opposition, plaintiff has not sought additional leave to amend her complaint. (See Opp. to Mot. (Docket No. 61).) Further, plaintiff has been given leave to amend her complaint three times already. She may not do so indefinitely. Accordingly, the court does not grant plaintiff leave to file a Fourth Amended Complaint.